

THE MILLER LAW FIRM

A PROFESSIONAL CORPORATION

E. POWELL MILLER, CEO

WWW.MILLER.LAW

950 WEST UNIVERSITY DR. SUITE 300

ROCHESTER, MI 48307

248-841-2200

January 8, 2016

VIA ECF

The Honorable Charles R. Breyer
United States District Court
Courtroom 6, 17th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and
Productions Liability Litigation*, MDL No. 2672 CRB (JSC)

Dear Judge Breyer:

E. Powell Miller, the founder of The Miller Law Firm, P.C. ("Miller Law Firm" or the "Firm") represents plaintiffs in the *Kaufman, Dixon, Hoffman, and Fisher* (E.D. MI) class action complaints. I respectfully apply to serve as a member of the Plaintiffs' Steering Committee for all plaintiffs.

During the period prior to the JPML's transfer order to the Northern District of California, I was appointed as an Interim Coordinating Counsel for Michigan in an unopposed vote of counsel who attended the initial pre-trial in Michigan. In that position, we worked diligently with counsel who had filed lawsuits in Michigan and in other courts, particularly, the Eastern District of Virginia and the District of New Jersey, as well as defense counsel, to coordinate addressing immediate issues, such as the preservation of evidence and the Volkswagen Goodwill Program. We were asked to serve as co-counsel for a number of firms filing complaints in Michigan, including colleagues from Robbins, Geller, Rudman & Dowd, LLP; Boies, Schiller & Flexner LLP; Gustafson, Gluek, PLLC; and many others.

The Miller Law Firm has achieved more than 2 billion in recoveries in MDL and other complex national class actions which required coordination with many counsel. I served as Co-Chair of the ABA Sub-Committee for Multi-District Class Action Litigation and Mass Torts for a term ending in 2012. I have tried 12 cases in a row to a verdict in favor of my clients. I have been named one of the top 10 lawyers in Michigan for six consecutive years from 2009-2015 by Super Lawyers Magazine and in 2010 and 2015, I was named the Lawyer of the Year by Best Lawyers in the category of Bet-The-Company Litigation. The Miller Law Firm is ranked Tier 1 in Detroit for Commercial Litigation by U.S. News, Best Lawyers; and the majority of the attorneys in the Miller Law Firm have been named Super Lawyers, a publication which lists the top five percent of practicing attorneys in each state, as selected by their peers. See Exhibit A.

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There are many outstanding firms in this case. What distinguishes the Miller Law Firm is that it has the ideal blend of experience for this case as it has developed two primary practice areas over twenty years: (1) commercial automotive litigation; and (2) class actions. The Firm is based in "automotive alley" in the same northern Detroit suburbs as VW and its major suppliers at issue in this case, including Bosch and Continental, German companies with their principal United States presence in Michigan. The Firm represents many automotive suppliers in Michigan and one of the largest automotive dealership networks in the world. I am very familiar with the complex operations and practices of the industry. For example, while VW's essential wrongdoing is not in dispute, there are other key issues that will require intensive analysis and expertise, including the liability of suppliers Bosch (who has been sued in several of the pending cases) and Continental. The automotive industry supply chain procedures are complicated as they involve the purchase order method of contracting. Our attorneys have a thorough understanding of these practices as we have continuously litigated over 100 automotive commercial cases over the last twenty years.

Litigation of the lawsuit will likely involve some significant activities in Michigan. My offices are just miles away from Volkswagen's Engineering and Environmental Office (EEO). The EEO was named by the Department of Justice in a recently filed complaint as an important source of evidence. (*United States of America v Volkswagen AG, Audi AG, et. al.*, C.A. 2:16-cv-10006, E.D. MI before the Honorable Laurie Michaelson). It is anticipated that depositions may be taken of personnel from that facility as well as document discovery. The Environmental Protection Agency's Ann Arbor Michigan Office of Transportation and Air Quality was in charge of issuing the certificates of compliance and will be a source of information in discovery and settlement negotiations. (*U.S. v Volkswagen, Id.*, ¶4) Our participation on the Steering Committee would streamline and save costs for many of these activities.

As set forth on Exhibit A, I have served as lead or co-lead counsel in numerous complex national class actions or have had a substantial role in the prosecution of those cases. We have recovered over \$2B for clients. Noteworthy cases include just having served as a special trial counsel in the antitrust class action, *Cason-Merendo et.al. v. VHS of Michigan, Inc., et. al.*, C.A. 2:06-cv-15601, before the Honorable Gerald E. Rosen of the Eastern District of Michigan (Chambers Phone: 313-234-5135); served as lead counsel in the first successful national dietary supplement class action, *Gasperoni v. Metabolife International, Inc.* C.A. 00-71255, before the Honorable Avern Cohn of the Eastern District of Michigan (Chambers Phone 313-234-5160); served as co-lead counsel in the *In Re: Refrigerant Compressors Antitrust Litigation*, MDL-2042, before the Honorable Sean F. Cox of the Eastern District of Michigan (Chambers Phone 313-234-2650) with a successful \$30M settlement; served as co-lead class counsel in *In re AIG 2008 Securities Litigation*, C.A. 08-CV-4772, which was successfully settled last year for \$970.5M and litigated before the Honorable Laura Taylor Swain of the S.D.N.Y. (Chambers Phone 212-805-0417); and I was co-lead class counsel and lead trial counsel in *City of Farmington, et. al. v. Wells Fargo Bank*, C.A. 0:10-cv-04372, which was resolved on the weekend before trial for \$62.5M and litigated before the Honorable Donovan W. Frank of the District of Minnesota (Chambers Phone 651-848-1290). I currently serve as Interim Liaison Counsel for the End Payor Plaintiffs *In Re: Automotive Parts Antitrust Litigation*, MDL-2311,

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pending before the Honorable Marianne O. Battani in the Eastern District of Michigan (Chambers Phone 313-234-2625).


I am willing and able to immediately give the commitment necessary for effective leadership and stand willing and able to serve in this case. The Firm operates with zero reliance on debt even though we have a significant class action and contingency practice. We have a firm policy to never utilize third party litigation finance firms. We are willing and able to contribute the resources to litigate this matter to resolution.

While our practice is national, we are considered the leading class action firm in Michigan. Over the past twenty years, we have worked with a very high percentage of the firms which are seeking leadership positions in this case. We have done so on a repeated basis which is a testament to our ability to work co-operatively and collaboratively as a team to ensure the successful prosecution of the case. While we did not engage in an active campaign to solicit support for this application, we are supported by the firms identified on Exhibit B, all of which we have worked or are currently working with on Multi-District Litigation and/or large class actions, including Cotchett, Pitre & McCarthy, LLP; Keller Rohrbach, LLP; and Robbins, Geller, Rudman & Dowd, LLP.

It would be a pleasure to be selected to the Steering Committee and I hope our application receives favorable consideration.

Respectfully,

The Miller Law Firm, P.C.



E. Powell Miller

cc: All counsel via ecf